

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SERGIO TORRES,  
Petitioner,

v.

ACTING WARDEN,  
Respondent.

No. 1:20-cv-01001-NONE-JLT (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS, DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY, AND  
DIRECTING THE CLERK OF COURT TO  
ASSIGN DISTRICT JUDGE AND CLOSE  
CASE

(Doc. Nos. 1, 14)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 14, 2020, the assigned magistrate judge issued findings and recommendations recommending that the petition be dismissed. (Doc. No. 14.) The findings and recommendations were served upon all parties and contained notice that any objections were to be filed within ten (10) days from the date of service of that order. To date, no party has filed objections.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and proper analysis.

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1 In addition, the court declines to issue a certificate of appealability. A state prisoner  
2 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of  
3 his petition, and an appeal is only allowed in certain circumstances. 28 U.S.C. § 2253; *Miller-El*  
4 *v. Cockrell*, 537 U.S. 322, 335–36 (2003).

5 If a court denies the petition, the court may only issue a certificate of appealability when a  
6 petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. §  
7 2253(c)(2). To make a substantial showing, the petitioner must establish that “reasonable jurists  
8 could debate whether (or, for that matter, agree that) the petition should have been resolved in a  
9 different manner or that the issues presented were ‘adequate to deserve encouragement to proceed  
10 further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.  
11 880, 893 (1983)).

12 In the present case, the court finds that petitioner has not made the required substantial  
13 showing of the denial of a constitutional right to justify the issuance of a certificate of  
14 appealability. Reasonable jurists would not find the court's determination that petitioner is not  
15 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to  
16 proceed further. Thus, the court DECLINES to issue a certificate of appealability.

17 Accordingly, the court orders as follows:

- 18 1. The findings and recommendations issued on September 14, 2020 (Doc. No. 14),  
19 are adopted in full;
- 20 2. The petition for writ of habeas corpus is dismissed;
- 21 3. The court declines to issue a certificate of appealability; and
- 22 4. The Clerk of Court is directed to assign a district judge to this case for the purpose  
23 of closing the case and then to close the case.

24 IT IS SO ORDERED.

25 Dated: October 23, 2020

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UNITED STATES DISTRICT JUDGE